

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2492 OF 2003.

Namdeo G. Sadigale

.. Petitioner

versus

Sharad Y. Dhamdhere

..Respondent.

Shri P.B.Shah for the Petitioner

Shri S.S.Hardikar for the Respondent

**Coram : S.R.Sathe, J.
Dated : 23rd Jan, 2006**

P.C.

1. By consent heard finally at admission stage.

2. Heard both the learned Advocates. Perused the papers. One thing is clear that the Plaintiff had filed the suit for recovery of the amount in respect of which the Defendant had issued cheque and the same was dishonoured. Admittedly, the said cheques were issued on 26.10.1998 and the same were dishonoured on 29.10.1998 and the intimation in that behalf was received on 29.10.1998. The suit is filed on 29.1.2002, obviously, after the period of three years from 29.10.1998. During the course of arguments the learned Advocate for the Respondent could not point out as to how the suit is in time.

So, having regard to the provisions of Order VII Rule 11 and considering the fact that in application submitted by the respondent for leave to defend he had specifically raised the point of limitation and submitted that on that count alone the suit deserves to be dismissed in limini, it was necessary for the concerned Court to take into consideration this aspect and then decide whether leave to defend is to be granted conditionally or unconditionally. Having regard to the facts of the case, I feel that in the instant case order of granting conditional leave directing the defendant to deposit the entire amount in the court is not sustainable. At the most the Trial Court should have granted leave to defend unconditionally. Hence, petition is partly allowed, the order passed by the Trial Court only to the extent of condition directing the defendant to deposit the amount claimed by the plaintiff in Court is set aside and the order granting leave to defend is only maintained. Thus, defendant should be allowed to defend the suit unconditionally.

. Writ Petition disposed of accordingly.

(S.R.Sathe, J.)